

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

N.E.M. (WEST INDIES) INSURANCE)	
LIMITED,)	
)	
Plaintiff)	
)	
v.)	CIVIL NO. 2002-0042
)	
AHLEEN RAWLINS, SAMUEL)	
RAWLINS, FIRST VIRGIN ISLANDS)	
FEDERAL SAVINGS BANK, and)	
MARKOE INSURANCE AGENCY, INC.,)	
)	
Defendants)	
_____)	

ATTORNEYS:

Bruce P. Bennett, Esq.
1138 King Street, Suite 301
Christiansted, St. Croix 00820
Attorney for Defendant First Virgin Islands Federal Savings Bank

Lee J. Rohn, Esq.
Law Offices of Lee J. Rohn
1101 King Street, Suite 2
Christiansted, St. Croix
U.S. Virgin Islands 00820-4933
Attorney for Defendants Ahleen Rawlins and Samuel Rawlins

Carol G. Hurst, Esq.
Suites B, 18-23 Palm Passage
P.O. Box 1498
St. Thomas, USVI 00804
Attorney for Plaintiff

MEMORANDUM OPINION

Finch, Chief Judge

This matter comes before the Court on Defendants' Ahleen Rawlins and Samuel Rawlins

Motion, pursuant to Fed. R. Civ. P. 12(b)(1), to Dismiss Plaintiff's Complaint for lack of subject matter jurisdiction based upon Plaintiff's failure to meet the applicable statute of limitations deadline. Defendants further contend that the principle of comity warrants dismissal of Plaintiff's complaint. Plaintiff opposes Defendants' motion. For the reasons expressed herein, Defendants' motion will be granted.

I. Background

On June 17, 1996, Ahleen Rawlins and Samuel Rawlins filed a Complaint against First V.I. Federal Savings Bank, Markoe Insurance Agency, and NEM West Indies Insurance Limited ("NEMWIL") in the Territorial Court of the Virgin Islands. Ahleen Rawlins and Samuel Rawlins claimed that an insurance policy for their home was in effect on September 15, 1995, when their home and its contents were severely damaged by Hurricane Marilyn, and that they were never compensated for their loss. The Rawlins sought damages, costs, and attorney fees for negligence, breach of fiduciary duty, and breach of contract.

On April 5, 2002, Plaintiff filed a complaint in this Court asking for a judicial determination that: (1) Plaintiff is not obligated to Defendants Ahleen Rawlins and Samuel Rawlins for claims submitted under the Policy for hurricane damage occurring on September 15, 1995, and that coverage did not exist until November 20, 1995; or alternatively that (2) Defendants Markoe Insurance Agencies, Inc. And First V.I. Federal Savings Bank are liable to Plaintiff. Plaintiff's Complaint also seeks costs and attorney fees.

II. Analysis

The Supreme Court has determined that “[o]rdinarily it would be uneconomical as well as vexatious for a federal court to proceed in a declaratory judgment suit where another suit is pending in a state court presenting the same issues, not governed by federal law, between the same parties.” Brillhart v. Excess Ins. Co. of America, 62 S.Ct. 1173, 1175 - 1176 (1942). In this case, it would indeed be adverse to the interests of efficiency for this Court to adjudicate Plaintiff NEMWIL’s request for a declaratory judgment. There has been a suit pending in the Territorial Court of the Virgin Islands since 1996 between Ahleen Rawlins and Samuel Rawlins, and First V.I. Federal Savings Bank, Markoe Insurance Agency, and NEMWIL. These are the same parties before the Court in this matter. Although the relief sought is different, the issues are the same - namely whether an insurance policy was in effect on the Rawlins’ home on September 15, 1995, and if so, whether First V.I. Federal Savings Bank, Markoe Insurance Agency, and/or NEMWIL was negligent, breached its fiduciary duties, and/or breached its contract. Finally, such issues are not governed by federal law.

III. Conclusion

For the foregoing reasons, Defendants’ Motion to Dismiss will be granted. An appropriate Order is attached.

ENTER:

Dated: March 18, 2004

RAYMOND L. FINCH
CHIEF U.S. DISTRICT JUDGE

Attest:
Wilfredo F. Morales
Clerk of the Court

By: _____
Deputy Clerk

cc: U.S. Magistrate Judge
Carol G. Hurst, Esq.
Bruce Bennett, Esq.
Lee J. Rohn, Esq.